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Environmental Protection

Environmental Protection; hazardous waste—management and control

Health & Safety Code §§25100, 25101, 25171, 25356 (repealed); §§25100, 25101, 25117.8, 25120, 25150.5, 25145.4, 25149.3, 25157, 25159, 25159.5, 25159.6, 25159.7, 25159.8, 25159.9, 25169.3, 25171, 25174.2, 25174.3, 25174.4, 25174.5, 25178, 25189.5, 25191.7, 25205, 25245, 25246, 25247, 25248, 25249, 25345.3, 25356, 25356.5 (new); §§25206, 25207, 25208, 25208.3, 25208.5, 25209, 25209.5 (new and repealed); §§25117, 25142, 25144, 25145, 25150, 25151, 25152, 25153, 25154, 25160, 25171, 25172, 25173, 25174.3, 25175, 25176, 25177, 25180, 25183, 25186, 25189, 25191, 25192, 25202, 25342, 25344 (amended); §25172 (amended and renumbered as §25105); Revenue and Taxation Code §§43008, 43101, 43153, 43251, 43411, 43412, 43506, 43601 (repealed); §§43008, 43101, 43651 (new); §§43002, 43012, 43051, 43052, 43102, 43151, 43152, 43201, 43301, 43303, 43306, 43402, 43443, 43452, 43478, 43602 (amended); Vehicle Code §2501 (amended); Water Code §§14000, 14001, 14002, 14003, 14027, 14040.1, 14040.2, 14040.3, 14041, 14042, 14043, 14050, 14055, 14055.1, 14055.2, 14055.4, 14055.5, 14055.6, 14055.7, 14055.8, 14060, 14080, 14100 (repealed); §§13172, 13226, 13227 (new); §13320 (amended).

AB 70 (Young); STATS. 1982, Ch 496

(Effective July 12, 1982)

Support: Attorney General; Department of Finance; Department of Health Services

AB 1356 (Lancaster); STATS. 1982, Ch 294

(Effective June 22, 1982)

Support: California Highway Patrol; City of West Covina; Department of Finance; Department of Health Services

AB 1543 (Tanner); STATS. 1982 Ch 89

(Effective March 2, 1982)

Support: Department of Finance; Department of Health Services; Office of Appropriate Technology

AB 2075 (Robinson); STATS. 1982, Ch 93

(Effective March 2, 1982)

Support: Department of Finance; Department of Health Services

SB 95 (Presley); STATS. 1982, Ch 90

(Effective March 31, 1982)

Support: Department of Health Services; State Water Resources Control Board

Chapters 89, 90, 93, 294 and 496 were enacted in an apparent attempt to handle the increasing amount of hazardous waste¹ being generated in California.² These chapters provide for better management of the disposal of hazardous waste by mandating specific guidelines for the operation of disposal facilities.³ Chapter 89 establishes a temporary Hazardous Waste Management Council⁴ to administer the procedures pertaining to the management of the wastes.⁵ Chapter 496 regulates the management of land around a hazardous waste site.⁶ Chapter 294 reflects the interest of the Legislature in decreasing the risk of spillage of hazardous substances during transportation.⁷ Chapter 90 mandates that operators of hazardous waste have the ability to financially cover damages resulting from the hazardous waste and provides procedures for site closure.⁸ Finally, Chapter 496 allows increased penalties for civil⁹ and criminal violations¹⁰ of hazardous waste laws,¹¹ and Chapter 93 provides rewards for information that materially reveals violations of the laws.¹²

1. CAL. HEALTH & SAFETY CODE §25117 (definition of hazardous waste). *See generally* Comment, *Hazardous Waste Pollution: The Need for a Different Statutory Approach*, 12 ENVIRON. L. 443, 443 (1982).

2. *See* CAL. HEALTH & SAFETY CODE §25100(a). *See also* CAL. STATS. 1982, c. 89, §32, at —; *id.* c. 90, §12, at —; *id.* c. 294 §5 at —; *id.* c. 496, §47 at —. *See generally* *Recent Developments in Waste Management*, 22 URBAN L.A. 317, 330-345 (1981) [hereinafter referred to as *Recent Developments*].

3. *See generally* CAL. HEALTH & SAFETY CODE §§25101, 25142, 25150-25154, 25157, 25159, 25159.5, 25159.6, 25159.8, 25159.9, 25160, 25169.3, 25170, 25171, 25174, 25174.5, 25175, 25177, 25178, 25180, 25186, 25202, 25205, 25206, 25208.3, 25169.3, 25245-25248; CAL. WATER CODE §13172, 13226, 13227, 13320.

4. *See* CAL. HEALTH & SAFETY CODE §25101(b)(c). *See generally id.* §25206, 25207, 25208, 25208.3, 25208.5, 25209, 25209.5. The Hazardous Waste Management Council consists of specified members whose duties include (1) developing a plan for reviewing all current and projected production of hazardous waste; (2) formulating a proposal for hazardous waste treatment, storage, or disposal; (3) determining site selection criteria for disposal of hazardous waste; and (4) investigating the methods for the reduction, reuse, recycling or recovery of potentially hazardous waste. Additionally, the Council will recommend a system of insurance to assure full compensation to all people damaged or injured. The Council will cease to exist on January 1, 1984. *Id.*

5. *Id.* §25101(a) (procedures include handling, treatment, recycling and destruction of hazardous waste prior to disposal), (c).

6. *See id.* §25149.3.

7. *See id.* §§25101, 25169.3.

8. *See id.* §25205(a), 25245(a).

9. CAL. CIV. PROC. CODE §30 (definition of civil action).

10. CAL. PENAL CODE §683 (definition of criminal action).

11. *See id.* §§25189, 25189.5, 25191.

12. *See* CAL. HEALTH & SAFETY CODE §25191.7.

Implementing Hazardous Waste Control Laws

In response to the need for improved hazardous waste management, Congress enacted the Resource Conservation and Recovery Act¹³ that approved state hazardous waste management programs.¹⁴ In compliance with federal requirements that mandate state hazardous waste programs be at least as strict as the federal scheme,¹⁵ Chapter 89 requires the State Department of Health Services [hereinafter referred to as the Department] to adopt regulations and standards equal to or more stringent than the federal requirements.¹⁶ In addition, Chapter 89 allows the Department to make trade secret information¹⁷ available to the Federal Environmental Protection Agency for the purposes of determining if certain waste is hazardous.¹⁸ Moreover, Chapter 89 creates a temporary Hazardous Waste Management Council to assist generators of hazardous waste in meeting the responsibilities for the safe disposal¹⁹ of the waste and to mandate procedures for running existing facilities and siting new ones.²⁰

Under prior law minimum standards were followed for the handling, processing and disposal of hazardous waste.²¹ Chapter 89 eliminates the minimum standards and mandates the department to adopt specific standards for handling and processing hazardous waste.²²

Recycling of Hazardous Waste

Existing law requires the recycling of any hazardous waste that can be recycled in an economically and technologically feasible manner and requires any producer to justify why waste cannot be recycled.²³ Under Chapter 89, if a producer states that waste cannot be recycled and the department still feels it is possible to recycle the waste, the department can require the waste to be recycled²⁴ at the site of production if feasible²⁵ or to be recycled through sale if there is a ready, will-

13. Pub. L. 94-580, 90 Stat. 2795 (Oct. 21, 1976); Andersen, *The Resource Conservation and Recovery Act of 1976: Closing the Gap*, 59 Wis. L. Rev. 635, 658 (1978).

14. See Anderson, *supra* note 13, at 658.

15. See *id.* at 659.

16. CAL. HEALTH & SAFETY CODE §25159.5.

17. BLACK'S LAW DICTIONARY 1339 (5th ed. 1979) (definition of trade secret).

18. CAL. HEALTH & SAFETY CODE §§25159.8, 25159.9.

19. See *id.* §25101(b).

20. See *id.* §§25101(a), 25208, 25208.3.

21. See CAL. STATS. 1979, c. 1152, §190, at 4311 (amending CAL. HEALTH & SAFETY CODE §25150(a)).

22. CAL. HEALTH & SAFETY CODE §25150(a).

23. See *id.* §25175(a).

24. *Id.* §25121 (definition of recycle).

25. *Id.* §§25175(b), 25157.

ing and able purchaser of the recyclable waste.²⁶

Transportation of Hazardous Waste

Existing law requires the State Department of Health to manage the transportation of hazardous waste.²⁷ The Department of California Highway Patrol, however, is required to inspect the vehicles and containers²⁸ used to transport the hazardous waste.²⁹ Then, the Department of Health Services must conduct required tests³⁰ before the transportation of hazardous waste occurs.³¹ Chapter 294 specifies that the Department must conduct tests to determine the chemical nature of the hazardous material before it is transferred from an abandoned site³² to a disposal site.³³ Additionally, Chapter 294 requires the hazardous waste hauler, in order to obtain a certificate of approval to transfer, to develop a safety plan and procedures for transporting the hazardous material³⁴ unless specified exceptions exist.³⁵ Furthermore, Chapter 89 requires the treatment of hazardous waste at the site if the Director of Health Services determines that treatment is necessary in order to provide safe transportation.³⁶

Hazardous Waste Facilities

Under existing law, the Department may adopt standards to regulate hazardous waste facilities after one public hearing³⁷ has been held and specified criteria³⁸ have been examined.³⁹ Chapter 89 expands the criteria to include types and volume of hazardous waste produced in the area and allows waste technology to be taken into consideration.⁴⁰

Existing law authorizes the State Department of Health Services to issue a hazardous waste facility permit.⁴¹ Chapter 90, however, prohib-

26. *Id.* §25175(b).

27. *See id.* §25161.

28. *Id.* §25169.1(c) (definition of containers).

29. *Id.* §25169.1(a).

30. *See id.* §25168.1; CAL. VEH. CODE §34020, 34501(a), (b).

31. *See* CAL. HEALTH & SAFETY CODE §25169.1.

32. *Id.* §25169.3(e) (definition of abandoned site).

33. *Id.* §25169.3(a).

34. *Id.* §25169.3(b).

35. *Id.* §25169.3(b), (f) (exceptions include accidental spills or emergency actions required to protect the environment or public health).

36. *Id.* §25157.

37. *See id.* §§18935 (hearings to be held by adopting agencies as required by the Administrative Procedure Act), 25150, 25152; CAL. GOV. CODE §11370.

38. *Id.* §18930, 25150(a).

39. *Id.* §§18930, 18935, 25150 (specified criteria include building standards approved by the State Building Standards Commission).

40. *Compare id.* §25151 with CAL. STATS. 1979, c. 1152 §91 at 4311 (amending CAL. HEALTH & SAFETY CODE §25151).

41. CAL. HEALTH & SAFETY CODE §25200.

its a permit from being issued unless the operator can establish that he or she possesses the financial capabilities to cover damages arising from operation of the facility.⁴² Furthermore, Chapter 90 provides that the primary responsibility for the closure and maintenance of hazardous waste sites is with the Department of Health Services and requires each operator to submit to the department a closure and maintenance report containing specified elements.⁴³ In order to protect water quality,⁴⁴ Chapter 90 mandates that each regional water control board review each report.⁴⁵

Existing law limits the use of land around hazardous waste properties.⁴⁶ Chapter 496 provides a procedure for determining if the use of land around a hazardous waste facility poses a potential hazard to present or future health and safety.⁴⁷

Penalties and Rewards

Existing law imposes civil and criminal penalties for violations of the hazardous waste control laws.⁴⁸ Chapter 496 increases the maximum allowable penalty from \$5,000 to \$25,000 for each civil violation.⁴⁹ Additionally, Chapter 496 imposes a mandatory penalty of a \$1,000 fine for intentional civil violations.⁵⁰ In addition, Chapter 496 increases the maximum fine from \$25,000 to \$50,000⁵¹ per day for criminal violations that include transporting, storing, or treating hazardous waste at a facility without a permit.⁵² Furthermore, Chapter 496 requires mandatory fines for specific subsequent criminal violations.⁵³ Moreover, Chapter 496 specifies that the hazardous waste control law does not preclude the Attorney General from commencing with any civil or criminal action.⁵⁴

Existing law requires civil penalties collected for violations of speci-

42. *Id.* §25205(a); *Recent Developments*, *supra* note 2, at 343.

43. CAL. HEALTH & SAFETY CODE §25245, 25246; CAL. WATER CODE §13227.

44. CAL. WATER CODE §13227(a).

45. *Id.* §13227(b).

46. *See* CAL. HEALTH & SAFETY CODE §§25196, 25221, 25232.

47. *Id.* §25149.3 (the procedure applies to land within one mile of the hazardous waste disposal site).

48. *Id.* §§25189(a), (b), (c), 25191. *See generally* Note, *Allocating the Costs of Hazardous Waste Disposal*, 94 HARV. L. REV. 584, 584-604 (1980).

49. CAL. HEALTH & SAFETY CODE §25189(a).

50. *Id.* §25189(c).

51. *Id.* §25189.5(b).

52. *See id.* §25191 (criminal violations include knowingly disposing of hazardous waste at a facility that does not have a permit).

53. *See id.* §25191(b).

54. *Id.* §25145.4.

fied provisions⁵⁵ of the hazardous waste control law to be deposited in the Hazardous Waste Control Account in the General Fund.⁵⁶ Additionally, the State Department of Health Services is required to pay either (1) half of any penalty awarded to the city or county if the action is brought by either entity or (2) the actual costs of prosecuting the case in which the penalty is awarded, whichever is less.⁵⁷ Chapter 93 requires the Department of Health Services to additionally make payment to any person who provides information that materially contributes to the conviction of a person for violating certain provisions of the hazardous waste control law.⁵⁸ The award is to equal 10 percent of the amount of the fine collected, but is not to exceed \$5,000.⁵⁹ Public employees will not be eligible for the reward, however, unless the reporting of violations does not relate in any manner to their responsibilities as public officers or employees.⁶⁰

Conclusion

In summary, Chapter 89, 90, 93, 294 and 496 provide better management in the production, storage, transportation and disposal of hazardous wastes. Chapter 89 provides procedures for managing hazardous waste facilities by creating the Hazardous Waste Management Council.⁶¹ Chapter 496 increases the maximum penalties for civil and criminal violations of hazardous waste laws and imposes minimum penalties for specified violations.⁶² Moreover, Chapter 93 provides rewards for information leading to the imposition of a civil penalty or criminal conviction for violations of the hazardous waste control laws.⁶³ Chapter 294 imposes regulations to ensure safe transportation of hazardous waste.⁶⁴ Finally, Chapter 90 requires operators of disposal sites to be equipped with specified permits that require financial stability to cover costs of damages arising from running these facilities.⁶⁵

55. *See id.* §25189 (specified provisions include intentionally or negligently making false statements or representations in relation to hazardous waste control laws).

56. *Id.* §25192.

57. *Id.*

58. *See id.* §25191.7(a), (b), (c) (violations include (1) transporting hazardous waste without a permit; (2) treating, storing, or disposing of hazardous waste at a facility that does not have a permit; and (3) making false statements or misrepresentations concerning hazardous waste documents).

59. *Id.* §25191.7(a).

60. *Id.* §25191.7(e).

61. *See id.* §§25101, 25206, 25207, 25208, 25208.3.

62. *See id.* §§25189, 25189.5, 25191.

63. *See id.* §25191.7. *See generally* Note, *Allocating the Costs of Hazardous Waste Disposal*, 94 HARV. L. REV. 584, 602-603 (1980).

64. *See* CAL. HEALTH & SAFETY CODE §25169.3.

65. *See id.* §25205. *See generally* Note, *Inactive or Abandoned Waste Sites: Coping with a Costly Past*, 53 SO. CAL. L. REV. 1709, 1712-1717 (1980).

Environmental Protection; oil spill notification

Water Code §13272 (new).

AB 2281 (Lehman); STATS. 1982, Ch 1480

Support: Department of Conservation; Department of Finance;
Water Resources Control Board

In an apparent attempt to provide for rapid clean-up of oil spills,¹ Chapter 1480 requires that any person² who causes or permits a specified amount³ of oil⁴ or petroleum products⁵ to be discharged upon the waters of the state⁶ to immediately report the spill.⁷ The notification must be given to either the Office of Emergency Services,⁸ an appropriate federal agency,⁹ or a regional board¹⁰ as soon after the person becomes aware of the spill as possible.¹¹ Chapter 1480 allows *notification* to be postponed only if it would substantially impede clean up efforts or other emergency responses to the situation.¹² Chapter 1480 does not require notification when the discharge is in compliance with waste discharge requirements.¹³

Persons who fail to provide notice of the discharge are guilty of a misdemeanor and will be punished by either (1) a fine ranging between \$500 to \$5,000 for each day of failure to report the spill, (2) imprisonment for a period up to one year or (3) both fine and imprisonment.¹⁴ This penalty does not apply to anyone who has already been fined by

1. See generally telephone conversation with Phyllis DeCroix, Legislative Aide to Assemblyman Lehman (August 6, 1982) (notes on file at the *Pacific Law Journal*).

2. CAL. GOV'T CODE §8574.5(a)(1) (definition of person).

3. CAL. WATER CODE §13272(g) (a specified amount consists of one barrel (fourty-two gallons) or more by direct discharge to the receiving waters, except in the case of discharge into a body of water that has a more restrictive reporting standard). See generally telephone conversation with Joe Hoyt, Legislative Aide to Assemblyman Lehman (August 18, 1982) (stating that a direct discharge to the receiving waters may be interpreted to mean a discharge to land that will flow into the receiving water) (notes on file at the *Pacific Law Journal*).

4. CAL. BUS. & PROF. CODE §13401(e) (definition of oil).

5. *Id.* §13401(c) (definition of petroleum product).

6. CAL. WATER CODE §13050(e) (definition of waters of state).

7. *Id.* §13272(a).

8. CAL. GOV'T CODE §8550(b) (definition of Office of Emergency Services); CAL. WATER CODE §13272(a) (the report shall be made in accordance with the procedures set forth in California Government Code sections 8574.1-8574.9).

9. CAL. WATER CODE §13272(e).

10. *Id.* §§13050(b) (definition of regional board); 13272(f) (the report will be made in accordance with the procedures set forth in California Water Code sections 13267 or 13383).

11. *Id.* §13272(a).

12. *Id.*

13. *Id.* 13272(b). See generally *id.* §§13260-13272 (waste discharge requirements).

14. *Id.* §13272(c).

the federal government for a failure to report the discharge.¹⁵ Furthermore, Chapter 1480 states that this penalty does not apply to anyone who has discharged oil or petroleum onto the land unless the land discharge fails to run into the waters of the state only because of the clean up efforts of a public agency.¹⁶ Finally, Chapter 1480 states that any information obtained from the notification cannot be used in any criminal case against the person who provided the notification except in a prosecution for perjury or giving a false statement.¹⁷

15. *Id.*

16. *Id.* §§13272(c), 13400(b). *See generally* 13400(b) (definition of public agency).

17. *Id.* §13272(d).

Environmental Protection; radiation—civil penalties

Health & Safety Code §25866 (new); §25863.1 (amended).

AB 1514 (Torres); STATS. 1982, Ch 96

Support: Department of Conservation; Department of Finance;
Department of Health Services

With the presence of potentially dangerous radioactive substances¹ becoming more common place² commentators have suggested that it is increasingly important that federal and state governments regulate the creation, use and disposal of these substances³ to effectively enforce the regulation of radioactive materials, without resorting to revoking the license of a company, the Nuclear Regulatory Commission (hereinafter Commission) has successfully relied on the use of civil penalties.⁴ Recently, the Commission has been encouraging state governments to also

1. *See* Carter, *Nuclear Energy and World Order*, 18 *ATOM. ENERGY L.J.* 148, 149-150 (1976). *See also* Ebersold, *The University of Cincinnati Whole Body Radiation Study: For Whose Benefit?* 15 *ATOM. ENERGY L.J.* 155, 159-164 (1973).

2. *See* Linker, *Radioactive Waste: Gaps in the Regulatory System*, 56 *DEN. L.J.* 1, 6 (1979).

3. *See* Udall, *New State Roles in the Management and Disposal of Commercial Nuclear Waste*, 18 *ATOM. ENERGY L.J.* 295, 295 (1977); *Opportunities for Improving AEC's Administration of Agreements with States Regulating Users of Radioactive Materials*, 15 *ATOM. ENERGY L.J.* 63, 63 (1973).

4. Atomic Energy Act, 42 U.S.C. §2282 (1976) (civil penalties); *see* letter from G. Wayne Kerr, Director of Office of State Programs, U.S. Nuclear Regulatory Commission, to Mario Obledo, Secretary of Health and Welfare Agency (February 1, 1982) (copy on file at the *Pacific Law Journal*) [hereinafter referred to as Kerr letter]; *see also* telephone conversation with Bob Fredenburg, Consultant to the Assembly Health Committee, (July 20, 1982) [hereinafter referred to as Fredenburg conversation] (notes on file at the *Pacific Law Journal*). *But see* Wood, *Enforced Standards of Competence, Full Disclosure and Public Control for the U.S. Nuclear Power Industry*, 18 *ATOM. ENERGY L.J.* 1, 15-17 (1976) (The author of this article does not feel that civil penalties are necessarily effective because large companies can easily afford to pay ample sums of money and will probably only pass the costs on to consumers anyway).

use civil penalties.⁵ In response, Chapter 96 was enacted and provides for civil penalties to supplement the existing Radiation Control Law⁶ (hereinafter referred to as the RCL).⁷ Furthermore, in order to encourage a more thorough enforcement of the RCL, Chapter 96 allows local public prosecutors to institute civil actions⁸ against violators.⁹

In addition to criminal penalties,¹⁰ existing law provides for a variety of civil actions to enforce the RCL, including injunctions,¹¹ liens¹² and revocation of a license.¹³ Under Chapter 96, any person¹⁴ who intentionally, or with gross negligence, violates any provision of the RCL, or fails to comply with an injunction, and in so doing causes substantial danger to the public health, can be civilly liable for an amount of up to \$5,000 for each violation, or for each day of a continuing intentional violation.¹⁵

Prior to the enactment of Chapter 96 only the State Attorney General was authorized to institute civil actions to enforce the RCL.¹⁶ Chapter 96 states that in addition to the Attorney General, a city or district attorney of the area where the violation occurs may also bring an action.¹⁷ Chapter 96 further provides that if the action is brought by the city or district attorney, the penalty must be paid to the city or county where the action is brought.¹⁸ If the action is brought by the Attorney General, however, the penalty must be paid to the State General Fund.¹⁹ Finally, Chapter 96 specifically states that this civil penalty will not supersede any other civil or criminal penalty.²⁰

5. See Kerr letter, *supra* note 4; see also Fredenburg conversation, *supra* note 4.

6. CAL. HEALTH & SAFETY CODE §§25800-25880.4. (Radiation Control Law).

7. See letter from Douglas X. Patino, Secretary of Employment Development Department to G. Wayne Kerr, Director of Office of State Programs, U.S. Nuclear Regulatory Commission, (copy on file at the *Pacific Law Journal*); see also Phone Conversation, *supra* note 4.

8. CAL. CIV. PROC. CODE §30; 2 B. WITKIN CALIFORNIA PROCEDURE, *Actions*, §16 (definition of civil action).

9. See Fredenburg conversation, *supra* note 4.

10. CAL. HEALTH & SAFETY CODE §25865.

11. *Id.* §25850.

12. *Id.* §25863.

13. *Id.* §§25845(b).

14. *Id.* §25805(c) (definition of a person includes every individual or group except the United States Atomic Energy Commission or any federal government agency licensed by it).

15. *Id.* §25866(a).

16. See CAL. STATS. 1969, c. 666, §8, at 1333 (adding CAL. HEALTH & SAFETY CODE §25863.1).

17. CAL. HEALTH & SAFETY CODE §25863.1(a) (allows enforcement by city and district attorneys if a violation occurs, occurred or will occur within their city or county). Compare CAL. STATS. 1969, c. 666, §8, at 1333 (amending CAL. HEALTH & SAFETY CODE §25863.1).

18. CAL. HEALTH & SAFETY CODE §25863.1(b).

19. *Id.*

20. *Id.* §25866(b).

